IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 885 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAYALBHAI SOMABHAI AHIR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 885 of 2004

MR NIRZAR S DESAI for Petitioner No. 1

MR PRADIP BHAT AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 01/02/2005

ORAL JUDGEMENT

Instead of taking Civil Application No.477 of 2005 for hearing, with the consent of both the parties, the main Special Civil Application is taken up for final

hearing.

2 The petitioner has prayed for an appropriate direction directing the respondents to issue Advance Royalty Collection Triplicate Passbook to the petitioner since, as per the petitioner, the lease is deemed to have been extended in light of Rule 18 of the Gujarat Minor and Minerals Rules, 1966 (hereinafter referred to as "the Rules") till respondent no.2 - Collector takes appropriate decision.

3 Upon hearing Mr Desai, learned counsel for the petitioner, and Mr Pradip Bhate, learned AGP, for the respondents, it appears that there is no dispute on the point that the Director of the Geology in Appeal as per the order dated 30th June, 2003 set aside the order of the Collector rejecting the application for renewal of the licence and directed for reconsideration of the matter after giving opportunity of hearing to the petitioner. There is also no dispute on the point that earlier as per the order dated 16th October, 2002 the District Collector rejected the application of the petitioner for renewal of the licence. The ground considered by the District Collector was that as the total period of 12 years is over, as per Rule 18(4), the renewal cannot be made and the another ground was that since last two years the petitioner has not excavated the mineral. The Director of Geology in appellate jurisdiction found that it is not that in every case the lease cannot be renewed after expiry of 12 years but it has been observed that if there is sufficient mineral and if the lessee is ready to comply with the conditions, the matter can be considered for extension and for such purpose reference is made to the instructions dated 22.3.1993 issued by the competent authority of the State Government. It is an admitted position that uptil now the District Collector after the remand has not taken any decision either to renew the lease of the petitioner or to reject the said application and it has been submitted that the matter is pending before the District Collector.

4 Mr Desai, learned advocate for the petitioner, however, submitted that as per Rule 18 if the renewal application is pending, the petitioner is entitled to benefit of deeming fiction and it is obligatory on the part of the respondent-authority to issue Advance Royalty Collection Triplicate Passbook to the petitioner and the petitioner is entitled to proceed on the basis that the lease is in operation.

5 Considering the facts and circumstances of the

case, I find that in case if the authority has taken the decision of not to allot Advance Royalty Collection Triplicate Passbook to the petitioner pending consideration of the matter by the District Collector after remand, such an approach on the part of the authority cannot be said to be unreasonable or arbitrary. However, at the same time, it would be expected of the District Collector to take appropriate decision in the matter and issue cannot be kept hanging for an indefinite period. The matter is remanded by the Director of Geology since 30th June, 2003 and as the matter is uptil now not decided by the District Collector, I find that considering the facts and circumstances of the case, the District Collector should be directed to take appropriate decision on the renewal application of the petitioner as early as possible, preferably within a period of one month from the date of receipt of order of this Court.

6 Hence, the relief prayed for by the petitioner to allot the Advance Royalty Collection Triplicate Passbook pending the consideration of the matter by the District Collector after remand is not granted but, the District Collector is directed to take appropriate decision in accordance with law upon the application of the petitioner for renewal of the licence as early as possible, preferably within one month from the date of receipt of order of this Court. It is made clear that the District Collector shall be at liberty to decide the matter independently without being influenced by the order of this Court for refusing the prayer for allotment of Advance Royalty Collection Triplicate Passbook to the petitioner for the interregnum period.

7 The petition stands disposed of accordingly.

8 In view of the order passed in the main Special Civil Application, Civil Application No.477 of 2005 does not survive and hence the same is disposed of accordingly.

(Jayant Patel, J.)
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